

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Roy and Josie Fisher, et al.,

Plaintiffs,

v.

United States of America,

Plaintiff-Intervenor,

v.

Anita Lohr, et al.,

Defendants,

and

Sidney L. Sutton, et al.,

Defendants-Intervenors,

CV 74-90 TUC DCB
(Lead Case)

Maria Mendoza, et al.,

Plaintiffs,

United States of America,

Plaintiff-Intervenor,

v.

Tucson Unified School District No. One, et al.,

Defendants.

CV 74-204 TUC DCB
(Consolidated Case)

1 **SPECIAL MASTER’S REPORT AND RECOMMENDATION REGARDING**
2 **RACIAL DISPARITIES AMONG FACULTY IN TUSD SCHOOLS**

3 **THE PROBLEM**

4 Section IV.E of the USP provides that the District shall seek to have a racially and
5 ethnically diverse staff in each school and defines diversity as a no more than a 15 percentage
6 point variance from the District average at comparable grade levels. This provision is intended to
7 implement one of the key standards established by the United States Supreme Court in *Green v.*
8 *County School Board of New Kent County (1968)* to determine whether a school district has met
9 its obligations under the Constitution of the United States to remedy the vestiges of segregation.
10 Meeting this standard is essential to the award of Unitary Status by the Court.
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13 Given the small number of African American teachers in TUSD, ensuring that African
14 American teachers are distributed evenly throughout the District does not seem wise and there are
15 no examples of concentrations of African American teachers in any particular school. Using the
16 15 percentage rule by grade structure, at least 19 of 49 elementary schools do not meet the
17 diversity criterion nor do 8 of 14 K-8 schools. Two middle schools do not. University High
18 School and Pueblo High School do not meet the 15 percentage points rule but both are close.
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21 Clearly, there are still substantial numbers of schools with “significant disparities.” It is
22 essential that the District move to address this problem as soon as possible because each new hire
23 and each transfer of teachers from one school to another represents a potential opportunity to
24 remedy disparities.
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RECOMMENDATION

The Court should direct the District to immediately develop and implement a plan to reduce by half by the beginning of the 2016-17 school year the number of schools in which there are existing racial disparities, as defined by the USP, among the teaching staffs. This plan shall include, but not be limited to the following practices:

1. School transfers by TUSD teachers shall not create or add to racial disparities in any school.
2. School transfer requests that contribute to the elimination of racial disparities shall have priority.
3. Incentives shall be used to motivate voluntary transfers. These incentives shall include, but not be limited to, financial incentives, reduction or modification of workload, and enhanced opportunities for professional advancement.
4. Beginning teachers may be assigned to schools at which students are achieving above the district average when such assignment will increase faculty diversity.
5. As necessary, the district shall actively recruit teachers to transfer to new schools when such transfers will bring about compliance with the relevant provisions of the USP.

The Court should also order the district to develop and implement a plan to eliminate all significant disparities in 2017-18 using the practices outlined above and such other practices as the District may deem appropriate. Given the experience in implementing the plan for the

1 coming school year, the District may amend the plan submitting it for review and comment to the
2 plaintiffs and the Special Master.

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4 None of the parties have objected to this proposed order.

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6 Respectfully submitted,

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8 /s/
Willis D. Hawley
Special Master

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10 Dated: March 22, 2016

CERTIFICATE OF SERVICE

I hereby certify that on, March 22, 2016, I electronically submitted the foregoing **SPECIAL MASTER'S REPORT AND RECOMMENDATION REGARDING RACIAL DISPARITIES AMONG FACULTY IN TUSD SCHOOLS** for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

J. William Brammer, Jr.
wbrammer@rllaz.com

P. Bruce Converse
bconverse@steptoe.com,

Oscar S. Lizardi
olizardi@rllaz.com

Michael J. Rusing
mrusing@rllaz.com

Patricia V. Waterkotte
pvictory@rllaz.com

Rubin Salter, Jr.
rsjr@aol.com

Kristian H. Salter
kristian.salter@azbar.org

Zoe Savitsky
Zoe.savitsky@usdoj.gov

Anurima Bhargava
Anurima.bhargava@usdoj.gov

Lois D. Thompson
lthompson@proskauer.com

Andrew H. Marks for
Dr. Willis D. Hawley,
Special Master

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[PROPOSED] ORDER

Upon consideration of the Special Master's Report and Recommendation Regarding Racial Disparities Among Faculty in TUSD Schools, and good cause having been shown.

IT IS ORDERED that the Special Master recommendations as follows:

1. School transfers by TUSD teachers shall not create or add to racial disparities in any school.
2. School transfer requests that contribute to the elimination of racial disparities shall have priority.
3. Incentives shall be used to motivate voluntary transfers. These incentives shall include, but not be limited to, financial incentives, reduction or modification of workload, and enhanced opportunities for professional advancement.
4. Beginning teachers may be assigned to schools at which students are achieving above the district average when such assignment will increase faculty diversity.
5. As necessary, the district shall actively recruit teachers to transfer to new schools when such transfers will bring about compliance with the relevant provisions of the USP.

The Court also orders the district to develop and implement a plan to eliminate all significant disparities in 2017-18 using the practices outlined above and such other practices as the District may deem appropriate. Given the experience in implementing the plan for the coming school year, the District may amend the plan submitting it for review and comment to the plaintiffs and the Special Master.

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Dated this _____ day of March, 2016.

David C. Bury
United States District Judge